PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
42P15793

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Signature: Amber D Saunders

Typed or printed name: Amber D. Saunders

Application No.	Filed
10/607,158	June 25, 2003

First Named Inventor: Koichi Yamada

Art Unit	Examiner
2113	Amine Riad

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
NOTE: No more than five (5) pages may be provided.

I am the:

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under of 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ Attorney or agent of record.
Registration Number 48,534

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

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November 22, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required.

☐ *Total of _____ forms are submitted.

Attorney Docket No. 042390.P15793

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Examiner: Amine Riad
Koichi Yamada	Art Unit: 2113
Application No.: 10/607,158	Confirmation No.: 5608
Filed: June 25, 2003	
For: **IDENTIFYING AFFECTED PROGRAM THREADS AND ENABLING ERROR CONTAINMENT AND RECOVERY**	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action mailed August 22, 2006 and the Advisory Action mailed October 12, 2006, in connection with the above referenced patent application, Applicant respectfully requests reconsideration in view of the following remarks.

REMARKS

In response to the above identified Final Office Action and Advisory Action, and in advance of the filing of an Appeal Brief, the Applicant seeks reconsideration of rejected Claims 1-26.

I. Claims Rejected Under 35 U.S.C. § 102

Claims 1-5, 7-17, 19-24, and 26 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,938,254 issued to Mathur et al. ("Mathur"). Applicants believe the Examiner has made a clear error in the rejection of these claims.

Claim 1 recites:

> "A method of terminating an affected application program thread, comprising:
> receiving an indication of a hardware error associated with an application program thread;
> determining the application program thread to be in a user operation mode; and
> terminating the application program" (emphasis added).

Mathur does not disclose a hardware error in association with an application program thread. Rather, Mathur discloses a method of controlling memory usage in a computer system having limited physical memory (Abstract). When the memory usage reaches a critical threshold, a user is prompted to select a currently executing application program for termination (col. 4, lines 56-59).

In the Final Office Action at page 8, the Examiner indicates that an error occurs when memory usage reaches the threshold or critical memory usage. The Examiner further indicates that "since this error affects memory which is hardware, then Mathur discloses a hardware error."

A hardware error, as generally known in the computer art, is an "error resulting from a malfunction of some physical component of the computer" (see, e.g., the definition provided by wordnet.princeton.edu). Critical memory usage is not an error caused by malfunction of a physical component of the computer. Critical memory usage may affect the use of memory, but is not related to hardware malfunction.

Applying the Examiner's analysis of the "hardware error," even a typical software error that affects memory allocation would be considered as a hardware error. For example, the malloc subroutine in the C programming language's standard library performs dynamic memory

allocation (see, e.g., "The C programming language" by Kernighan and Ritchie, Prentice-Hall, 1978). When the memory allocated by malloc exceeds the available memory size, an error occurs in the C program that calls the malloc subroutine. This malloc error is a software error because it is caused by unsuccessful execution of software code. However, applying the Examiner's analysis, a malloc error would be considered as a hardware error, because it affects the memory in the same way as the overused memory of Mathur. Thus, the above example shows that the Examiner's assertion simply contradicts with the common meaning of a hardware error. Thus, the Examiner has made a clear factual error in the rejection, at least with respect to the claimed "hardware error."

Analogous discussions apply to independent Claims 8, 13, and 20 and their dependent claims which incorporate the limitations thereof. Accordingly, reconsideration and withdrawal of the anticipation rejection of Claims 1-5, 7-17, 19-24 and 26 are requested.

II. Claims Rejected Under 35 U.S.C. § 103(a)

Claims 6, 18 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Mathur over U.S. Patent No. 6,594,785 issued to Gilbertson et al. ("Gilbertson").

Claims 6, 18 and 25 depend from Claims 1, 13 and 20 and incorporate the limitations thereof. Thus, for at least the reasons mentioned above in regard to Claim 1, Mathur does not teach or suggest each of the elements of these dependent Claims.

Gilbertson does not cure the deficiency of Mathur. The Examiner relies on Gilbertson for disclosing the claimed receiving information of the poisoned data address associated with a hardware error. However, Gilbertson does not disclose a hardware error in association with an application program thread. Rather, Gilbertson discloses a multiprocessor system that isolates faults within a failing partition (e.g., a processor) and prevents the faults from creating a failure in a non-failing partition (col. 1, lines 46-50). The fault isolation in Gilbertson is achieved by modularizing the system and by confining the faults within a physical partition of the system. Gilbertson does not teach or suggest the concept of a hardware error associated with an application program thread, and the termination of that thread if the thread is in a user operation mode. Thus, Mathur in view of Gilbertson does not teach or suggest each of the elements of Claim 1 and its dependent Claim 6.

Accordingly, reconsideration and withdrawal of the obviousness rejection of Claims 6, 18 and 25 are requested.

CONCLUSION

Applicants respectfully request that the Pre-Appeal Brief Conference Panel withdraw the rejection of the pending claims, for the reasons set forth above.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: November 22, 2006

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Amber D. Saunders 11/22/06

Amber D. Saunders Date